HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

R.S.A No.3606 of 2002 and
Cross Objection No.9-C of 2005.
Date of decision : 09.01.2007

Ram Nath **.....Appellant**

versus

Ram Parkash and others **.....Respondents**

CORAM : HON'BLE MR. JUSTICE HEMANT GUPTA.

Present : Ms.Monika Jalota, Advocate for the appellants.
Mr.R.S.Athwal, Advocate, for the respondents.

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JUDGMENT

HEMANT GUPTA, J. (Oral)

The plaintiff is in second appeal aggrieved against the judgment and decree passed by the Courts below, whereby his suit for declaration claiming estate of deceased Mihan Ram on the basis of Will dated 1.8.1985, has been dismissed and the parties have been held entitled to succeed the estate of the deceased Mehan Ram by virtue of natural succession.

Both the Courts below have recorded a concurrent finding of fact, discarding the Will dated 1.8.1985, propounded by the plaintiff and the Will dated 8.8.1985, propounded by the defendants, to hold that the estate of deceased Mihan Ram will be succeeded by natural succession. Such a finding is based on proper appreciation of evidence. It could not be pointed out that any evidence has been misread or not taken into consideration. In view thereof, such findings are affirmed.

Learned counsel for the appellant has vehemently argued that respondent Nos.13 & 14 are the purchaser from defendant Nos.1 & 2 and the sale by defendant Nos.1 & 2 is in excess of their share. However, I do not find any substance in such argument raised by the learned counsel for the appellant, in view of the Full Bench Judgment of this Court, reported as ***"1981 PLJ-204, Bhartu versus Ram Sarup".*** The sale of specific share by a co-sharer is still a share of joint property. Therefore, even if specific share has been sold by the defendant Nos.1 & 2, the said sale is subject to the rights of the parties at the time of partition.

Consequently, I do not find any illegality or irregularity in the findings recorded by the Courts below, which may raise any substantial question of law in the second appeal for consideration of this Court.

The appeal and Cross Objections stand dismissed.

(HEMANT GUPTA)
JUDGE

January 9, 2007
**mohinder*